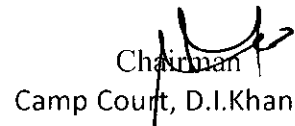


12.03.2018

Attorney for the appellant (Mr. Abdul Mateen) and learned AAG alongwith Mr. Attaullah Minakhel, DEO and Mr. Muhammad Kamran, ADO for the respondents present. Attorney for the appellant requested that the instant appeal may also be fixed alongwith similar cases for tomorrow. Granted. To come up for arguments tomorrow on 13.3.2018 before D.B at camp court, D.I.Khan.


Member


Chairman
Camp Court, D.I.Khan

13.03.2018

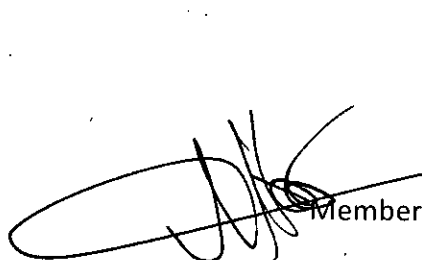
Attorney for the appellant (Mr. Abdul Mateen) and Mr. Ziaullah, DDA alongwith Mr. Attaullah DEO and Mr. Muhammad Kamran, ADO for the respondents present. Attorney for the appellant submitted an application that arguments made by other counsel may be treated arguments in this appeal as well. Application placed in connected appeal No. 1187/12. Arguments of the learned DDA heard. To come up for order on 14.03.2018 before this D.B at camp court, D.I.Khan.

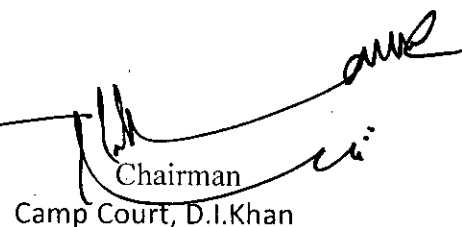

Member


Chairman
Camp Court, D.I.Khan

14.03.2018


Attorney for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Attaullah, DEO and Mr. Muhammad Kamran, ADO for the respondents present. Arguments already heard. Record perused. Vide our detailed judgment of today in service appeal No. 943/2012 entitled "Mst. Mehnaz Begum Vs. The Government of Khyber Pakhtunkhwa through Secretary, E&SE, Peshawar and others" this appeal is also dismissed. Parties are left to bear their own costs. File be consigned to the record room.


Member


Chairman
Camp Court, D.I.Khan

22.02.2018


Counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Kamran, ADO for respondents No. 1, 2 & 5 and Mr. Naveed Zafar, Assistant Account Officer for respondent No. 4 also present. None present on behalf of respondent No. 3 hence, proceeded ex-parte. Written reply on behalf of respondent No. 4 submitted. Written reply on behalf of respondents No. 1, 2 & 5 already submitted. Adjourned. To come up for rejoinder and arguments, on 12.03.2018 before D.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

Service Appeal No. 1224/2014


30.11.2017

Appellant in person present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muhammad Kamran, ADO (litigation) and Mr. Naveed Zafar, Assistant Account Officer for the respondents also present. Written reply on behalf of respondents not submitted despite last chance. Learned District Attorney requested for adjournment. Another last chance granted. Adjourned. To come up for written reply/comments on 25.01.2018 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan


25.01.2018

Appellant in person present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muhammad Kamran, ADO (litigation) and Mr. Naveed Zafar, Assistant Account Officer for the respondents also present. Written reply on behalf of respondents No. 1, 2 and 5 submitted. Representative of respondent No. 4 requested for further adjournment. Another last opportunity granted. Adjourned. To come up for written reply/comments on behalf of respondents No. 3 and 4 on 22.02.2018 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

25.07.2016

Tour programme of D.I. Khan scheduled for 25.07.2016 and 26.7.2016 is hereby cancelled, therefore the case is adjourned to 29.11.16 for written reply. Parties be informed accordingly.


Member

~~Camp Court D.I. Khan~~

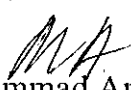
29.11.2016

Since tour is hereby cancelled, therefore, the case is adjourned for the same on 23.08.2017.


Reader

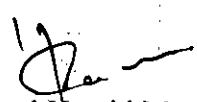
23.08.2017

Counsel for the appellant present. Mr. Muhammad Kamran, ADO (litigation) alongwith Mr. Farhaj Sikandar, District Attorney for the respondents also present. Written reply on behalf of respondents not submitted. Representative of respondent-department requested for further time for submission of written reply. Adjourned. To come up for written reply/comments on 26.10.2017 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

26.10.2017

Appellant with counsel present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Kamran ADO Litigation and Naveed Zafar ADO, for the respondents present. Representative of the respondent department requested for time to file written reply. Request accepted by way of last chance. To come up for written reply/comments on 30.11.2017 before S.B at Camp Court D.I.Khan.


(Muhammad Hamid Mughal)
Member
Camp Court D.I.Khan

26.01.2016

Counsel for the appellant and Mr. Farhaj Sikandar, GP with Khalid Saeed, ADO for the respondents present and requested for adjournment. To come up for written reply positively on 23.2.16 at camp court, D.I.Khan.


MEMBER
Camp Court, D.I.Khan

23.2.2016

Counsel for the appellant and Mr. Farhaj Sikandar, GP with Khalid Saeed, ADO for the respondents present. Respondents need time. To come up for written reply alongwith other connected appeals of sacked employees on 29.3.16 at camp court, D.I.Khan.


MEMBER
Camp Court, D.I.Khan

29.3.2016

Appellant in person and Mr. Kamran alongwith Mr. Farhaj Sikandar, GP for the respondents present. Respondents need further time. Case to come up for written reply on 26.7.16 at camp court, D.I.Khan.


MEMBER
Camp Court, D.I.Khan

1224/14

30.3.2015

Appellant Deposited
Security & Process Fee



Counsel for the appellant and Minhaj Sikander GP for the respondents present. Counsel for the appellant submitted, that appeal of the similar nature 344/14 Naseem Ullah has already been admitted by this tribunal in which the date fixed is 25.5.15. Hence this appeal is also admitted to regular hearing. Points raised at the Bar need consideration. This appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issue to the respondents. To come up for written reply on 28.9.15 at camp court D.I.Khan



MEMBER
Camp Court, D.I.Khan

28.09.2015

Counsel for the appellant and Mr. Farhaj Sikandar, GP with Khalid Saeed Akbar, ADO for the respondents No. 1 to 3 and 5 present and requested for adjournment. Notice be issued to respondent No. 4. To come up for written reply of all the respondents without fail on 24-11-15 at camp court, D.I.Khan.



MEMBER
Camp court, D.I.Khan

24.11.2015

Counsel for the appellant and Mr. Farhaj Sikandar, GP with Khalid Saeed Akhtar, ADO for the respondents present and requested for further time. The learned GP is also directed to contact the respondents. To come up for written reply positively on 26-1-16 at camp court, D.I.Khan.



MEMBER

Camp Court, D.I.Khan

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1224/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	13/10/2014	<p>The appeal of Mr. Irfan Ali Abbas resubmitted today by Mr. Muhammad Anwar Awan Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2	30-1-15	<p>This case is entrusted to Touring Bench D.I.Khan for preliminary hearing to be put up there on <u>23-2-2015</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
3	23-2-15	<p><i> counsel for the appellant present and requested for adjournment. Allowed To come up for preliminary hearing on 30-3-2015 at Camp Court, D.I.Khan.</i></p> <p style="text-align: right;"><i>[Signature]</i> Member Camp Court, D.I.K.,</p>

The appeal of Mr. Irfan Ali Abbas son of Ghazanfer Ali r/o Gali Kapas Wali Ex-PTC GPS Kohar Sharqi Distt. D.I.Khan received to-day i.e on 16.9.2014 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission with in 15 days:-

- ① Copy of appointment order dated 02.07.2007 of the appellant as PTC mentioned in para-2 of the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Copy of detail Judgement of this Tribunal mentioned in para-3 of the memo of appeal (Annexure-B) is not attached with the appeal which may be placed on it.
- 3- Copy of impugned termination order mentioned in the heading of the appeal is not attached with the appeal which may be placed on it.

No. 1363 /S.T,

Dt. 17/9 /2014.


Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar.

Mr. M. Anwar Awan Adv. D.I.Khan

Respected Sir,

The appointment order is attached on Page 8 of the file.
The copy of detail judgment dated 27-10-2011 is attached. The
appeal is against verbal termination order and there is no written
termination order is in field. *Anwar Adv*

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

CAMP COURT D. I. Khan.

Appeal no. 1224 of 2014.

Irfan Ali Abbas

VERSUS

Govt; Of KPK and others

INDEX

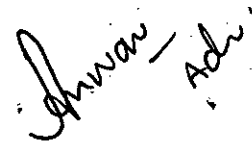
No.	Particulars	Annexure	Pages
1	Appeal		1-4
2	Copy Order, NOC & appointment order.	A	5-8
3	Copy of order dated 27.10.2011	B	9-10
4	Copy of recommendation	C	11-15
5	Copy of order dated 14.03.2012.	D	16-18
6	Copy of Departmental Appeal	E	19
7	Wakalat Nama	F	20

Your humble Petitioner



Irfan Ali Abbas

Dated; 12-09-2014.



Mohammad Anwar Awan
Advocate High Court.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

CAMP COURT D.I. KHAN.

Appeal no... 1924 of 2014.

Irfan Ali Abbas S/O Ghazanfer Ali R/O Gali Kapas Wali Ex
PTC GPS Kokar Sharqi D.I.Khan.

VERSUS

1189
16/9/2014

1. Director Elementary and Secondary Education Deptt: Peshawar.
2. Executive District officer Elementary and Secondary Education Deptt: D I khan
3. District Coordination Officer and Secondary Education Deptt. D.I.Khan
4. Account Officer Kechary Road Dera Ismail Khan.
5. Government of KPK through secretary Elementary and Secondary Education Deptt: Peshawar.

**APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL
ACT AGAINST ILLEGAL AND MALAFIDE VERBAL
TERMINATION ORDER FROM SERVICE ON THE BACK
OF APPELLANT.**

Amir

That the brief facts of the case are as under:

1. That the petitioner is permanently resident of Tehsil D.I.Khan and having qualification PST/CT.
2. That the respondent advertised some post in daily Mashriq Peshawar dated 7th April 2007 of different categories including PST. At the time of advertisement the petitioner is serving in the Judiciary as Process Server so petitioner after taking NOC from the department applied for the post and appointed as PTC teacher. The copies of order, NOC and appointment order is are Annexure A.
16/9/14
3. That the some inquiries were conducted against some appointment and they terminated all the appointment orders during January 2007 to 30th June 2008 including the petitioner. The petitioner challenged the impugned order through service appeal which was accepted. Copy of order is Annexure B.
13/10/14

submitted to...
filed;

Registered
13/10/14

4. That according to the order of learned service tribunal, the secretary education conducted so called inquiry, inviting the appellant in circuit house D.I.Khan and Clerk of education department provided a Proforma, which were filled by the appellant and submitted the same to the clerk. The Proforma contain inquiry regarding qualification of the appellant in which no show cause was given nor it contained charges on the appellant. Copy of recommendation is Annexure C.
5. That the inquiry report was produced before the service tribunal who directed the department to ensure the compliance with the recommendation without any wastage of time, so the aggrieved persons can seek remedy available to them. Copy of order is Annexure D.
6. That petitioner after the inquiry report waiting for the decision of department and contacted several time for their reinstation or termination order but they reluctant to issue any such order. Copy of Applications is Annexure E.
7. That feeling aggrieved from the illegal verbal termination order (because no termination order was issued till now), appellant filed this departmental appeal. Copy of departmental appeal is Annexure F.
8. That feeling aggrieved from above said action petitioner is constrained to approaches this honorable court on the following amongst other:

Amir
GROUND:

1. That the appellants are not treated in accordance with law and the actions of the respondents are malafide besides being discriminatory and harsh.
2. That the report of committee is nothing more than a recommendation to Government. The said report could not be made sole ground for termination of large number of civil servants.
3. That the report of committee is not based on the direction of the service tribunal in which it is clearly mentioned that qualification of the teacher should be checked but committee terminated them on the basis of non observance of codal formalities which issued was already decided by the Hon'ble Service Tribunal.

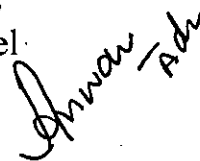
4. That appellants are being penalized without giving them any opportunity of hearing, they were neither associated with the proceeding of standing committee nor have given any show cause notice by the department, which is against the principal of natural justice.

In view of the above, It is, therefore, most respectfully prayed that on acceptance this appeal this honorable court may pleased to declare that the verbal order and verbal termination to be without lawful authority and of no legal effect and respondents may pleased be directed to reinstate the appellant with all back benefits.

YOUR HUMBLE APPELLANT



Irfan Ali Abbas
Through Counsel



Dated; 12-09-2014.

Mohammad Anwar Awan
Advocate Supreme Court

AFFIDAVIT

Irfan Ali Abbas do hereby solemnly affirm and declare on OATH that the contents of the same are true and correct to the best of my knowledge and belief and that nothing has been concealed from this honorable court.



Deponent.

Oath Commissioner
R.O. & A.C.O.
Attested

No. _____

A-5

OFFICE OF THE SENIOR CIVIL JUDGE, Dera Ismail Khan.

No: _____/G Dated D. I. Khan the _____/Sep 2003.

ORDER

As per recommendations of the Departmental Selection committee vide its meeting held on 17-9-2003, the following selection order of various categories of posts in BPS-1 is hereby accorded with immediate effect.

List of process servers selected:

- 1- Sanaullah s/o Amjad Ali.
- 2- Mohammad Ramzan s/o Ghulzm Qadir.
- 3- Arfan Ali Abbas s/o Ghaznifer Ali.
- 4- Javed Iqbal s/o Ghulam Qasim.
- 5- Malik Irfan Ali s/o Malik Nousher.
- 6- Sanaullah s/o Jaber Din.
- 7- Qmer Zaman s/o Mohammad Hanif.
- 8- Zafer Iqbal s/o Ghulam Rabbani.
- 9- Tufail Anwar s/o Rahim Bukhsa.
- 10- Saifur-Rehman s/o Khalifa Abdul Qayyum.
- 11- Tahir Nawaz s/o Allah Nawaz.
- 12- Naimat Ullah son of Mando.
- 13- Mohd: Saghir Ahmad son of Chaudhry Alimuddin.
- 14- Mohammad Umar Jehangir son of Malik Alamgir.
- 15- Safdar Hussain son of Amir Hussain.
- 16- Ishfaq Ali Ahmad son of Niaz Muhammad.
- 17- Syed Amir-ul-Hasnain Shah son of S. Hashim Shah.
- 18- Syed Shah Ismail son of Syed Ibrahim Shah.
- 19- Muhammad Riawan son of Muhammad Usman Saduzai.
- 20- Muhammad Yousaf son of Sulfiqar Ali.
- 21- Asmat ullah son of Ghulam Yasin.
- 22- Manshid Qayyum son of Abdul Qadir.
- 23- Ali Nawaz son of Haq Nawaz.
- 24- Amir Ullah son of Aurangzeb.
- 25- Ghulam Kubari son of Haji Khan.

Attested
Anwar

P 80

LIST OF NAIB QASID SELECTED IN BPS: 11-

1. Muhammad Hafeez son of Muti Ullah.
2. Kamir Ahmad son of Bashir Ahmad.
3. Muhammad Ijaz son of Shah Nawaz.
4. Safraz Shah son of Saidan Shah.
5. Rana Muhammad Khalid son of Rana Sanaulah.

LIST OF CHOWKIDAR SELECTED IN BPS: 11-

1. Khyzar Hayat son of Ghulam Hashim.
2. Kalim Ullah son of Hamid Ullah.

LIST OF SWEEPER IN BPS: 11-

1. Irfan Masih son of Masih.

NOTE:

1. All the above orders are purely on temporary basis and will be liable to termination with out Notice.
2. The above officials will remain on probission for one year and will be regularised after the complication of said period subject to there good performance and observations about there attituded .
3. 15 Process Servers, four Naib Qasid, one Chowkidar and one Sweeper appointed vide this order will be paid through the Budget Grant under head Access to Justice Program while the others will be paid through Regular Budget. The Clarafitmon about the payees of Access to Justice Program and Regular Budget will be made in there posting orders.

(SYED ACEEL AJIZ)

SENIOR CIVIL JUDGE, DILKAN.

Order No: 595/35 G., dated Dilkan, the 19/5/23

Copy forwarded to :-

1. The District Registrar, Bahawalpur.

2. The District Inspection Team,

3. Bahawalpur High Court, Dilkan.

4. The District and Sessions Judge,

5. Bahawalpur.

6. The District Accounts Officer, Dilkan.

(SYED ACEEL AJIZ)

SENIOR CIVIL JUDGE, DILKAN.

NO: 304/307

dt: 14/4/07

- 6 -

TO WHOM IT MAY CONCERN

Permission is hereby granted to Irfan Ali Abbas
Process Server (BPS-1) of this establishment to apply for
the Post of PTC Teacher in Education Department, P.J. Khan.

Dated; 13.4.2007.

D.S.
(HAG. (P. J. KHAN))
SENIOR CIVIL JUDGE. / *MOJ*
Dera Ismail Khan.
Dera Ismail Khan;

Attested

Anwar

OFFICE OF THE SENIOR CIVIL JUDGE, D.I.KHAN.

- 7 -

No. _____/SCJ.

Dated D.I.Khan the 21/11/2007.

ORDER:

Consequent upon his application, Mr. Irfan Ali Abbas son of Ghazanfar Ali, posted as Process Server in the establishment of undersigned, is hereby relieved from his duties as Process Server with effect from today i.e. 21/11/2007 (afternoon), enabling him to join his new posting/appointment as Primary School Teacher in the office of Executive District Officer (Schools & Literacy) D.I.Khan, vide No.12555-973 dated 02/7/2007.

sd/_____
Senior Civil Judge,
Dera Ismail Khan.

Endst: No. 11/31-25 /SCJ. Dated D.I.Khan the 21/11/2007

Copy forwarded to:

1. The Executive District Officer: (Schools & Literacy) D.I.Khan
2. The District Officer (M) (Schools & Literacy) D.I.Khan
3. The District Accounts Officer, D.I.Khan
- ✓ 4. The Headmaster Govt. primary School Kirri Baz Muhammad (Kath Garh) D.I.Khan.
5. Official Concerned

Attested
Shwan

Senior Civil Judge,
Dera Ismail Khan.

- 8 -

Office of the Executive District Officer schools & Literacy
D.I.Khan

ORDER

Consequent upon Selection/appointment of Mr. Irfan Ali Abbas as
PST at Kirri Qaz Muhammad vide this office
No. 12655- 973 dated 2 - 7 - 2007 before this he
was regular employ of Judiciary, D.I.Khan hence his
services are hereby regularized and he will be entitled for all services benefits as
admissible under the rules vide Govt. of N.W.F.P. Estb & Admn DEPTT Reg: wing No.
SO IV(E&A) 1-13/2003 of 16-04-2003.

- NOTE:
1. Necessary entry to this effect should be made in his service book.
 2. He will provide relieving cert along with service book/ILPC etc from his parent department.

[Signature]
Executive District Officer
Executive District Officer
Schools & Literacy D.I.Khan.

Endst. No. 24583-85 / Dated D.I.Khan the 30/11/07

Copy of the above is forwarded to the

1. District Accounts Officer D.I.Khan for information.
2. Principal/ Head Master/HEAD Teacher Concerned.
3. Head of the Parent Department-District D.I.Khan.
4. Official Concerned.

Attested
Shirwan

[Signature]
Executive District Officer
Schools & Literacy D.I.Khan.

B-9

BEFORE THE SERVICE TRIBUNAL K.P.K., PESHAWAR



Service Appeal No. 1796 / 2010

W.P. No. 1251
Service No. 1944
Date 03/9/10

Irfan Ali Abbas S/o Ghazanfar Ali
Ex-PTC GPS Kokar Sharqi Tehsil & District,
D.I.Khan

Appellant

Versus

1. Govt. of K.P.K., through Secretary Elementary & Secondary Education, Peshawar.
2. Director Elementary & Secondary Education K.P.K., Peshawar.
3. District Coordination Officer, D.I.Khan.
4. Executive District Officer (Elementary & Secondary Education) D.I.Khan

Respondents

Appeal u/s 4 of the NWFP Service Tribunal Act, 1974 against the impugned order dated 04.09.2009, whereby the services of the appellant has been terminated

Filed to-day
3/9/10

Attested
Shiraz

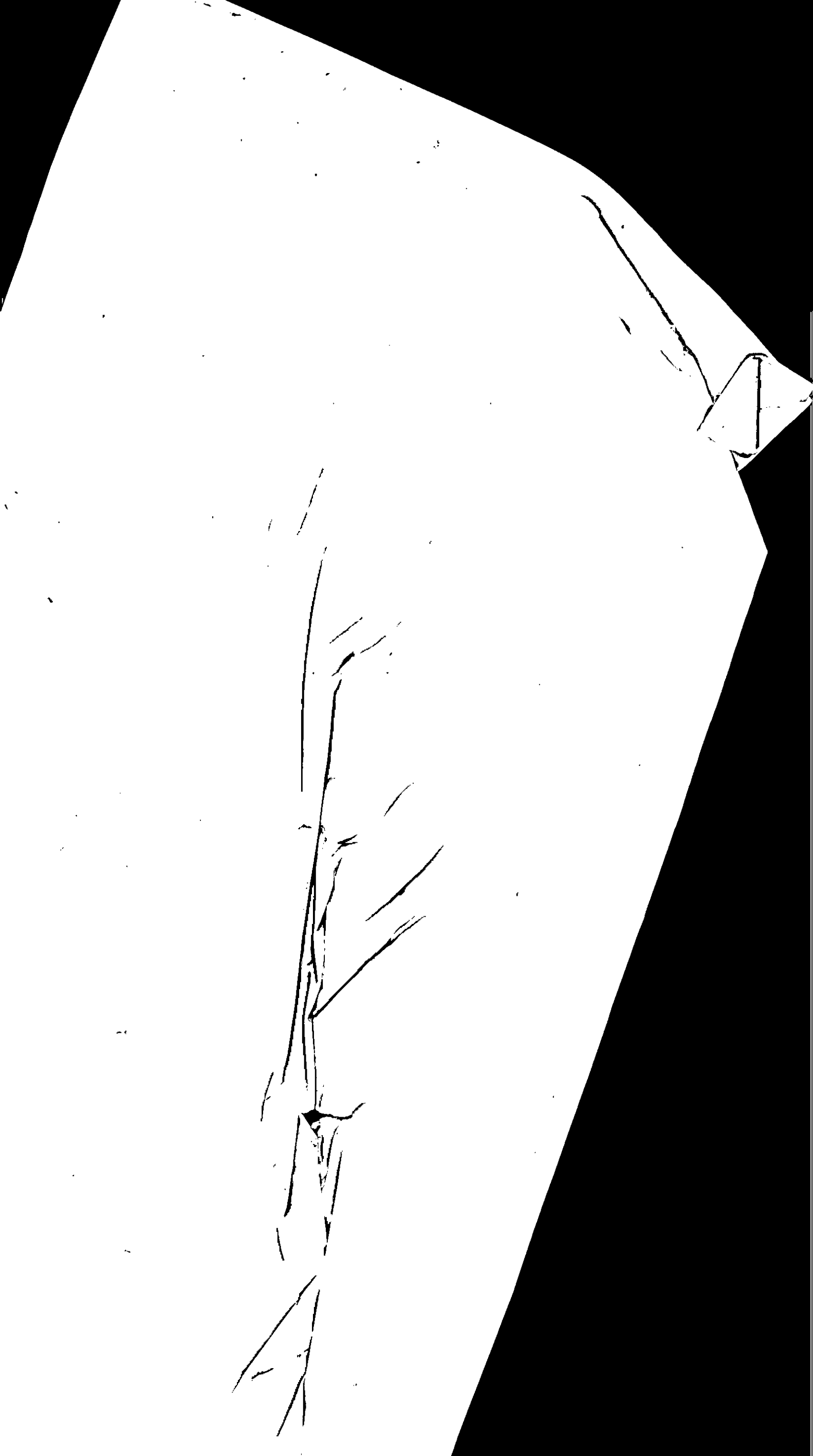
Prayer

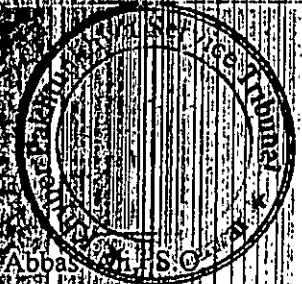
On acceptance of this appeal this Honorable Tribunal may be pleased to set-aside the impugned order dated 04.09.2009 and the appellant be re-instated to his service with all his back benefits

Presented to-day and filed.

Registrar 24/9/10

ATTESTED
EX AMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar





27.10.2011

Counsel for the appellant M/S Hidayatullah, S.O. Abbas, Mashal Khan, L.O., Miss Nadia, A.D and Muhammad Nawaz, ADO on behalf of the respondents with AAG present. Arguments heard and record perused.

Vide detailed judgment of today, placed on connected appeal No.1407/2010 titled 'Abdul Salam-vs-Province of KPK through Secretary, E&SE, Peshawar etc.', the appeal of the appellant is accepted and impugned termination order in his/her case set aside, but instead of his/her outright reinstatement, his/her case is remanded/sent back to the Secretary, Elementary & Secondary Education Department, Peshawar (Respondent No.1) for reconsideration of the case in the light of observations made in the judgment, for reinstatement of the qualified appellants and a speaking order in respect of those who are not found qualified, by the competent authority, after affording opportunity of hearing to the appellant(s) through an efficient and fair mechanism to be evolved for the purpose by him so as to ensure compliance with the mandatory legal requirements on the one hand and integrity of the proceedings on the other. Since the matter has already been delayed inordinately, it is expected that the proposed exercise should not take more than three months, where-after a progress report be submitted to the Registrar of the Tribunal.

The respondent-department should also look into claim of appellants who have alleged performance of duty for considerable time after their appointment. If they are found to have actually performed duty for certain period, as such, entitled to pay/salary for the period of the duty, legal procedure should be adopted for recovery of their claims from the then ED@ D.I.Khan who has already been held responsible for appointments in-question as a consequence of departmental proceedings against him. There shall, however, be no order as to costs.

ANNOUNCED
27.10.2011

MEMBER

CHARMAN

Attested
[Signature]

Date of Presentation of Application: 2-2-2012
Number of Petitions: 6
Date of Delivery of Copy: 2.2.2012

Certified to be true copy
Khyber Pakhtunkhwa Service Tribunal
Peshawar

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

10A



SERVICE APPEAL NO: 1407/2010

Date of institution: 21.07.2010
Date of judgment: 27.10.2011

Abdul Salam S/o Shah Sulaiman
D.I.Khan, Ex..P.T.C GPS, Kamal Khel

(Appellant)

VERSUS

1. Province of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Peshawar.
2. Director of Education (E&S) Khyber Pakhtunkhwa, Peshawar.
3. Executive District Officer (E&S) Dera Ismail Khan.
4. District Coordination Officer, Dera Ismail Khan. (Respondents)

APPEAL U/S 4 OF NWFP (KHYBER PAKHTUNKHWA) SERVICE TRIBUNALS ACT, 1974 AGAINST IMPUGNED ORDER DATED 04.9.2009, WHEREBY THE APPELLANT HAS BEEN TERMINATED FROM SERVICE BY THE INCOMPETENT AUTHORITY, DISREGARD OF THE RULES, AND WITHOUT OBSERVING THE LEGAL REQUIREMENTS, AND HIS DEPARTMENTAL APPEAL ELICITED NO RESPONSE WITHIN STATUTORY PERIOD.

1. Shahzada Irfan Zia, Advocate for the appellant
 2. Ashraf Ali Khattak
 3. Ghulam Nabi
 4. Saadullah Khan Marwat
 5. Muhammad Arif Baloch
 6. Muhammad Anwar Awan
 7. Shaukat Ali Jan
 8. Matiullah Rand
 9. Abdul Qayyum Qureshi
 10. Muhammad Ismail Alizai
 11. Abdul Hamid Khan
 12. Muhammad Waqar Alam
 13. Muhammad Saeed Butt
 14. Muhammad Saeed Khan & M. Asghar Khan
 15. Rustam Khan Kundi
 16. Gul Tiaz Khan
 17. Zahid Muhibullah
 18. Khalil-ur-Rehman Hissani
 19. Fazal-ur-Rehman Batoch
 20. Javed Iqbal
 21. Yasir Zakria Batoch
 22. Allah Nawaz, Advocates
- Advocates from S.No.2 to 22 for the remaining appellants.
Mr. Sher Afgan Khattak, AAG. For respondents

ATTESTED

SECRETARY
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

Mr. Qalandar Ali Khan
Syed Manzoor Ali Shah

Chairman
Member

JUDGMENT

QALANDAR ALI KHAN, CHAIRMAN:- This single judgment is also directed to dispose of the appeals mentioned in the list appended herewith, as common questions of law and facts are involved in all the appeals.

2. In the Daily 'Mashriq' Peshawar dated 7th April 2007, a publication advertisement appeared from the Executive District Officer (EDO), E&SE, D.I.Khan. inviting applications for unspecified posts, both male and female, of C.T. Drawing Masters (D.M), Physical Education Teachers (PET), Arabic Teachers (A.T), Islamiyat (Theology) Teachers (TT), Qary and Primary School Teachers (PST) by 20.4.2007, and alongwith other conditions for selection of the candidates, the minimum qualification for the posts, dates of test and interview as well as places/venues of interview were also mentioned. The record would show that a large number of applications were received. Test and interview were also conducted for the said posts, resulting in appointments not only against the above mentioned posts but also against other posts like Junior Clerks, Lab Assistants and Assistant Store Keeper (M) in the year 2007. However, in the year 2008, a local Member of the Provincial Assembly, raised question No.31 regarding recruitment/appointments made in the Education Department of District D.I.Khan by the EDO D.I.Khan, which was referred to Standing Committee No.26 for Elementary & Secondary Education, by the Provincial Assembly. The Standing Committee deliberated upon the issue, during which the Committee was informed that inquiries had also been conducted into appointments in Education Department of District D.I.Khan and Inquiry Committee/Inquiry Officers have made recommendations for appropriate legal/departmental action. After deliberations, the Standing Committee recommended

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Services Tribunal
Peshawar

that within one month the department should cancel appointment orders of those persons who were illegally appointed during the period between 1st January 2007 and June 2008 and also take stern disciplinary action against officers/officials found involved in illegal appointments. The record further shows that a Writ Petition was lodged in the High Court Bench D.I.Khan, which was accepted and an Hon'ble Bench of the Peshawar High Court D.I.Khan Bench directed the department to act upon the inquiry report dated 05.01.2009 positively within two months from 11.6.2009, where upon the District Coordination Officer (DCO) D.I.Khan passed office order dated 4.9.2009 thereby implementing the decision of the Standing Committee No.26, order of the Peshawar High Court D.I.Khan Bench dated 11.6.2009 and order of the Chief Minister NWFP (Khyber Pakhtunkhwa) contained in the Elementary & Secondary Education Department letter dated 26/8/2009, and terminated services of all the 'illegally/irregularly' appointed teachers, detail of which was given in Annexure to the office order. This office order of the DCO D.I.Khan was followed by a letter dated 7.5.2010 from the EDO(E&SE) D.I.Khan to all concerned for implementation of termination orders issued by the DCO on 4.9.2009, and also a corrigendum on 20.5.2010 thereby terminating all the personnel appointed from January 2007 to 30th June 2008 except 131 (F)PST, 309 (M) PST - deceased son quota, disabled quota and minority quota in the light of decision of the Peshawar High Court, D.I.Khan Bench. It is against the said order of DCO D.I.Khan that the appellant in the instant appeal as well as appellants in the connected appeals, listed in the enclosed list, first preferred departmental appeals and then lodged these appeals. In the meantime, some of the appellants had also approached Peshawar High Court, D.I.Khan Bench and had filed Writ Petitions which were returned to the petitioners for presentation to the proper forum (KPK Service Tribunal); if they so desire, vide order dated 29.4.2010. The petitioners moved the august Supreme Court of Pakistan where from the petitions were withdrawn and consequently dismissed by a Hon'ble Bench of

[Handwritten scribble]

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

10D

august Supreme Court of Pakistan vide order dated 28.6.2010 with the observation that if the petitioners approached proper forum for redressal of their grievances, the question of limitation be considered sympathetically if so raised. There-after, the appellants started lodging these appeals one by one; inter-alia, on the grounds that the impugned order dated 4.9.2009 was void, illegal and without jurisdiction because DCO D.I. Khan was not competent to terminate the services of officials in BPS-1 to BPS-10; that the DCO did not apply his independent mind and just acted upon the direction of Chief Minister and recommendation of a politically constituted Standing Committee; that before passing the impugned order, legal requirements were not fulfilled and the appellants were terminated from service without any charge sheet and/or show cause notice; that no chance of personal hearing was afforded to the appellants before passing the impugned order; hence they were condemned unheard; that even during the course of successive inquiry proceedings, the appellants were not associated to justify their respective position and thus the entire proceedings were conducted ex-parte; and that if there was any fault or lapse on the part of the department in the selection process, the appellants should not have been punished for the same.

3. It may be mentioned here that quite a number of affectees of the impugned termination order had also approached this Tribunal in the year 2009 and vide order dated 10.2.2009, this Tribunal had disposed of around 49 appeals with direction to the Secretary to Government of NWFP (S&L) to constitute a committee of experts of his department and, if need be, of the Establishment Department and Finance Department, to consider the cases of all the appellants named in the order as well as cases of all similarly placed persons, and decision regarding the same be given at the level of the competent authority, so that the parties are saved from unnecessary litigation, in the interest of justice, and in the interest of public work. It was expected that such a committee would be in a position to finalize its findings, and the competent authority may be in a position

ATTESTED
[Signature]
[Stamp]

to grant a decision in these cases, within a period of three months from the date of delivery of the order. The said order was not implemented within the specified time, therefore, implementation petitions were lodged, wherein directions were accordingly issued to the department for implementation of the order, following which, a committee comprising a Chairman and three other Members was constituted, which conducted its proceedings and submitted its report, which has been kept in the office record, while a copy of report/findings/recommendations has been placed on this file. The Scrutiny Committee concluded that appointments of all the appellants, except that of Shahana Niazi D/o Ghulam Sadiq (Service Appeal No. 2177/2010), were illegal and irregular. The report/findings/recommendations of the Scrutiny Committee reveals appointments of more than two thousand teachers of various categories against following 1390 sanctioned posts:-

PST	961
AT	61
TT	59
Qari	50
CT	171
DM	43
PET	45
Total	1390

4. The respondents defended the impugned termination order and resisted the appeals on several legal and factual grounds including the one that the services of a civil servant can be terminated without notice during the initial or extended period of his probation under section 11(i) of the NWFP (Khyber Pakhtunkhwa) Civil Servants Act, 1973. They alleged, in their written reply/comments, that the appellants were neither eligible/qualified for the posts, nor requisite codal formalities for appointment were observed, hence the appointments were illegal and fake. They contended that more than one inquiries were conducted and the matter was taken up in the Provincial Assembly and that it was recommended as a result of inquiries as well as by the Standing

ATTESTED
 CLERK
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

105

Committee, recommendations of which were unanimously adopted by the Provincial Assembly, to terminate the services of all persons illegally appointed. They maintained that all the appointments were found illegal and in violation of recruitment policy except 309 (M) and 131 (F) PST. They concluded that the decisions of the Inquiry Committees and recommendations of the Standing Committee, adopted unanimously by the Provincial Assembly, were also confirmed by the Chief Minister as well as by the Peshawar High Court D.I.Khan Bench, which were followed by the DCO by terminating the services of all those persons who were illegally/irregularly appointed and that the order of DCO was also followed by corrigendum issued by the EDO.

5. Arguments of the learned counsel for the appellants and learned SAG heard, and record perused.

6. The main thrust of the arguments of the learned counsel for the appellants was against the impugned order dated 4.9.2009 of the DCO D.I.Khan, which was a general order in all the cases of 'illegal/irregular' appointments. The objections to the impugned order were two-fold. Firstly, the order was general in nature on the direction/recommendation of the Standing Committee of the Provincial Assembly without application of mind to each and every case, and thereby services of around 1613 male and female teachers of various categories were terminated with one stroke of pen; and secondly, the order was passed by the DCO D.I.Khan who was not appointing authority for employees in BPS-1 to BPS-10, and thus not competent to dispense with their services. The learned counsel further laid stress on the non-observance of codal formalities essentially required for termination of services of civil servants, like service of charge sheet and/or show cause notice and providing them opportunity of defence and hearing. They also alleged non-association of appellants in the inquiry proceedings conducted in the matter. The learned counsel contended that the appellants were appointed after qualifying test and interview for the posts conducted in pursuance of

ATTESTED

EXAMINER
Cyber Pakhtunkhwa
Service Tribunal,
Peshawar

105

advertisement/publication made in the newspaper by the department/authority and after their applications for the posts were found in order by the department. They maintained that the appellants had joined service and performed their duty without any complaint about their performance from the quarter concerned.

7. The learned AAG assisted by the representatives of the department vehemently contested claim of the appellants/counsel for the appellants and argued that the appointments were made without first obtaining proper sanction of the posts, without advertisement, and without observance of the codal formalities including test and interview, preparation of merit list, and its approval by the competent authority. It was argued on behalf of the department that some of the appointments were made even before advertisement, without specifying the posts against which the appointments were being made and without checking whether the educational qualification of the candidates fulfilled the academic requirements for the posts. It was pointed out that all 440 PSTs appointed on merits and after observance of codal formalities were retained, while the rest appointed 'illegally/irregularly' were terminated as a result of more than one inquiries, recommendation of the Standing Committee, and orders of the Chief Minister as well as Peshawar High Court, D.I.Khan Bench. It was alleged on behalf of the department that the competent authority i.e. EDO D.I.Khan not only endorsed the impugned order of DCO D.I.Khan dated 4.9.2009 but also issued a follow up letter dated 7.5.2010 and corrigendum on 20.5.2010. They further pointed out that none of the appellants was in possession of proper documents showing his eligibility for the post, and also proper appointment order against the post. They concluded that the appointments of the appellants have been found by various legal and constitutional forums as illegal/irregular, besides fake in most of the cases.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

8. From whatever has been narrated above, as well as from perusal of the record, the following points emerge which are critically important for determination of fate of these appeals:-

(a) The services of the appellants, appointed in 2007, were dispensed with vide a general order of the DCO D.I.Khan dated 4.9.2009, against which some of them preferred departmental appeals and then lodged appeals in the Tribunal, which were disposed of vide order dated 10.2.2009, while the rest moved the Peshawar High Court D.I.Khan Bench in writ jurisdiction, but their writ petitions were returned to them for presentation to the proper forum vide judgment/order dated 29.4.2010, against which petitions were moved in the august Supreme Court of Pakistan, which were dismissed as withdrawn with the observation that if the petitioners/appellants approached the appropriate forum for redressal of their grievances, the question of limitation be considered sympathetically if so raised. Not only that the question of limitation has not been raised so vehemently by the department, the appellants have also been vigilantly pursuing their case, albeit in the wrong forum, therefore, the appeals lodged in the Tribunal after disposal of their petitions by the august Supreme Court of Pakistan cannot be held as time-barred, especially when the august Supreme Court of Pakistan directed for sympathetic consideration of the question of limitation, together with certain facts of the case warranting interference by the Tribunal. Besides, the impugned order has been issued by the DCO D.I.Khan who was not appointing authority of civil servants in BPS-1 to BPS-10, and, as

[Handwritten scribble]

ARTES
ARTES
ARTES

such, the impugned order would be deemed to be an order by an authority not competent to issue the order, and, as such, void; and no limitation would run against such order (2007-SCMR 262 (g) and PLJ 2005 SC 709 (Appellate Jurisdiction)).

(b) The posts of Junior Clerks, Lab Assistants and Assistant Store Keeper (M) were never advertised, and, as such, no contractual formalities were observed for appointment of 14 Junior Clerks, 03 Lab Assistants and one Assistant Store Keeper. Their appointments were, therefore, aptly termed as illegal/irregular, and consequently, their services have rightly been terminated, as appointments secured through illegal/irregular orders would be void ab-initio and would not confer any right on the holders of such appointment orders. Their appeals also deserve to be dismissed on this score.

(c) After painstaking exercise in pursuance of the order dated 20.01.2011 in one of the implementation/execution petitions, for which the then Secretary Education, Mr. Muhammad Arifeen Khan, and his team genuinely deserve commendation, the Scrutiny Committee prepared a detailed report, stretching over hundreds of pages, wherein they held only the appointment of PST Shahana Niazi D/o Ghulam Sadiq (Service Appeal No.2177/10) according to the prescribed procedure, as her name also appeared in the merit list, and recommended her reinstatement into service. The respondent-department also did not contest her appeal in the manner they contested appeals of other appellants. Therefore, her appeal deserves to be accepted.

[Handwritten signature]
ATTESTED
EXAMINER
Scrutiny Committee
Presidential

(d) Regarding the remaining cases, the respondents have resisted the appeals on the grounds that neither the posts on which appointments of the appellants were made were sanctioned before advertisement, nor the appellants qualified or were eligible for the posts and codal formalities like test and interview, preparation of merit list and approval of competent authority were not observed; but these assertions of the respondents are belied by the available record as well as some documents produced by the appellants/counsel for the appellants alongwith a joint affidavit by Muhamamad Ayub Khan, SET GHS Panyala and Abdullan T T GHS Panyala who performed duty during test and interview of the appellants on 24th, 25th and 26th April 2007, during the course of arguments, showing constitution of committees for conducting test and interview, preparation of merit list after test and interview, besides revealing some cases in which the candidates other than those claimed by the respondents to have been appointed on merit secured more marks than the latter. So far sanction prior to advertisement/publication is concerned, it was duty of the authority to secure the requisite sanction prior to advertising/publicizing the posts for inviting applications, and the appellants can, by no stretch of imagination, be held responsible for any fault/lapse in this respect, on the part of the authority i.e. EDO D.I.Khan. Notwithstanding the fact that appellants have placed on file verification of the certificates/testimonials of some of the appellants by the respondent department, even if some irregularity was found in the appointments, the appellants/appointees should

ADMITTED

not be made to suffer for such lapses on the part of the appointing authority (1996 SCMR 411 (Supreme Court of Pakistan), 2004 SCMR 303 (Supreme Court of Pakistan), 2006 SCMR 678 (Supreme Court of Pakistan), PLJ 2006 SC 81 (Appellate Jurisdiction), PLJ 2011 Lahore 736 (Multan Bench Multan), and last but not the least 2011 SCMR 11581 (Supreme Court of Pakistan).

(e) It is a matter of record that not in a single inquiry out of so many inquiries by the department, the then EDO D.I.Khan has been confronted with his signatures on appointment letters, so conveniently termed by the respondent department as bogus and fake. When the 'authority' has never and no-where disowned his signatures on such appointment letters, how the same can be held as bogus and fake. No-doubt, the record shows departmental proceedings against the then EDO, and major penalty of compulsory retirement has been imposed upon him, but only after causing colossal loss to the national exchequer, for which he must be made accountable and also made to make good the loss so caused to the public money, and also landing hundreds of jobless persons in deep trouble by forcing them to engage in protracted litigation, during which they have not only been robbed of whatever money was left with them after securing the jobs; while himself enjoying post retirement life with all perks and privileges. In view of implications/consequences of the acts on the part of the then EDO D.I.Khan, the penalty imposed on him does not appear commensurate with the gravity of his guilt, but since that matter is,



ATTESTED

Signature and stamp area, partially obscured by the 'ATTESTED' stamp.

order void and invalid in respect of those who were found eligible for the posts after observance of codal formalities.

(g) There is no dispute that in the case of appointments, in BPS-1 to BPS-10, the appointing authority, in view of notification of the Provincial Government dated 7th October 2005, was EDO and thus also competent authority for disciplinary matters; whereas the District Coordination Officer was appointing authority for officials in BPS-11 to 15; therefore, the impugned order in respect of the appellants issued by the DCO D.I.Khan was an order by an incompetent authority and not sustainable in law as held in cases reported as 1983 PLC (C.S) 354 (Service Tribunal Punjab), 2001 PLC (C.S) 1097, 2008 PLC (C.S) 949 (Lahore High Court) and 1985 PLC (C.S) 1062. The contention of the respondents was that the competent authority i.e. EDO D.I.Khan not only endorsed the impugned order issued by the DCO D.I.Khan and issued a letter for implementation of termination order but also issued corrigendum thereby terminating the services of the appellants. Apart from the fact that endorsement of the order of an incompetent authority by the competent authority and follow up letter by him would not validate a void order issued by an incompetent authority, the corrigendum issued after more than 8 months of the impugned order would also not serve any useful purpose in view of PLD 2000 SC 104, as after issuance of termination order the department had become functus-officio.

(h)

It was urged on behalf of the respondents that recommendations of the Standing Committee of the Provincial Assembly assumed legal

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

10 N

status following judgment/order dated 11.6.2009 of the Peshawar High Court D.I.Khan Bench, whereby a clear direction was issued to act upon the inquiry report, but they lost sight of the fact that no direction of any authority could absolve the departmental authority from following the law rules on the subject and fulfill necessary legal requirements before passing the impugned order.

9. As a sequel to the foregoing discussion, we would make the following orders:-

- (i) All the appeals of Junior Clerks, Lab. Assistants and Assistant Store Keeper(M) are dismissed with costs, being devoid of merit.
- (ii) The appeal of Ms. Shahana Niazi (Service Appeal No. 2177/10) is accepted, and by setting aside the impugned order, she is reinstated in service with consequential/back benefits.
- (iii) The appeals of the rest of the appellants including PSTs(M&F), CTs(M&F), PETs(M&F), DMs(M&F), ATs(M&F), TTs(M&F) and Qaris (M&F) are also accepted and impugned termination order in their cases set aside, but instead of their outright reinstatement, their cases are remanded/sent back to the Secretary, Elementary & Secondary Education Department, Peshawar (Responder: No.1) for reconsideration of the cases in the light of above observations for reinstatement of the qualified appellants and a speaking order in respect of those who are not found qualified, by the competent authority, after affording opportunity of hearing to the said appellants through an efficient and fair mechanism to be evolved for the purpose by him so as to ensure compliance with the mandatory legal requirements on the one hand.

ATTESTED

EXAMINER
Services Tribunal
Peshawar

100

and integrity of the proceedings on the other. Since the matter has already been delayed inordinately, it is expected that the proposed exercise shall not take more than three months, whereafter a progress report be submitted to the Registrar of the Tribunal.

(iv) The respondent Department should also look into claim of those appellants who have alleged performance of duty for considerable time after their appointment, and if they are found to have actually performed duty for certain period, and, as such, entitled to pay/salary for the period of the duty, legal procedure should be adopted for recovery of their claims from the then EDO D.I.Khan who has already been held responsible for appointments in question as a consequence of departmental proceedings against him.

ATA
0345989557

ANNOUNCED
27.10.2011 (SYED MANZUOR ALI SHAH)
MEMBER

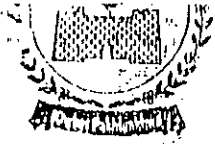
(QALANDAR ALI KHAN)
CHAIRMAN

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	2-11-2011
Number of Vols.	6000
Copying Fee	32-00
Legal	2-00
Total	34-00
Name of Applicant	4
Date of completion of Copy	2-11-2011
Date of delivery of Copy	2-11-11

C-11-



ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

25

REPORT/FINDINGS/RECOMMENDATIONS/
OF THE COMMITTEE WITH REFERENCE TO SECRETARY TO
GOVERNMENT OF KHYBER PAKHTUNKHWA ELEMENTARY AND
SECONDARY EDUCATION DEPARTMENT NOTIFICATION NO SO
LITIGATION/E&SE/1-3/2011 /D.I.KHAN DATED 29.11.2011 IN
PURSUANCE OF KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
ORDER DATED 27.10.2011 ON SERVICE APPEAL NO 1407/2010
AND OTHER CONNECTED APPEALS.

INTRODUCTION:

In pursuance of the judgment of Khyber Pakhtunkhwa Services Tribunal dated 27.10.2011 in Service Appeal No 1407/2010 Abdusl Salami versus Province of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education and the others connected Service appeals, (Annexure-A), and judgment dated 16.12.2011 2011 in Service Appeal No 3052/2010 Lubna Sadia versus Province of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Secretary Elementary and Secondary Education Department Khyber Pakhtunkhwa constituted a Committee vide Notification No SO Litigation/E&SE/1-3/2011 /D.I.Khan dated 29.11.2011 comprising of the following for reconsideration of the cases in light of the judgment of the Honourable Services Tribunal vide (Annexure-B)

1. Secretary) E&SE Department (Chairman).
2. Director (E&SE) Khyber Pakhtunkhwa, Peshawar (Member).
3. Abdul Wali Khan Dy Director (E&SE) (Member).
4. Ghulam Qasim EDO (E&SE) Tank. (Member).
5. Feroz Hussain Shah EDO (E&SE) DI Khan (Member).
6. Mushiraf Ali AD (F&A) E&SE (Member).

TOR:

- To examine the appeals of the rest of the appellants including PST(M&F),CT(M&F),PET(M&F),DM(M&F),AT(M&F),TT(M&F) and Qaris (M&F) in the light of the judgment of Khyber Pakhtunkhwa Services Tribunal dated 27.10.2011 in Service Appeal No 1407/2010 and the others connected Service appeals.
- To examine, scrutinize the record of local office D.I.Khan regarding the appointments in the year 2007-08.

Attested
Amman

- To frame efficient and fair mechanism and procedure to find out the qualified appellants according to the observations in the aforesaid judgment and implement.
- To ensure compliance with the mandatory legal requirements on the one hand and integrity of the proceedings on the other.
- To consider the claim of those appellants who have alleged performance of duty for considerable time after their appointment as directed by the Honourable Services Tribunal.
- To provide an opportunity of hearing to the appellants.
- To provide an opportunity to all concerned to produce record, documents etc in support of their claims and possible remedy.
- To act in accordance with rules, Law and Policy prevailing in 2007-08 regarding the recruitment of the above said posts.
- To fulfill the given task within the period as expected and proposed by the Honourable Service Tribunal in his judgment dated 27.10.2011.
- To consign the record in the safe custody of the competent authority.
- To pass on evidence, both documentary and verble, record and analysis conclude findings and make recommendations as way forward so as to ensure equity and justice.

BRIEF HISTORY OF THE CASE:

In District DI Khan reportedly illegal and irregular appointments were made in Elementary and Secondary department at a large-scale during the period from 01.01.2007 to 30.06.2008. The matter was highlighted by one Honourable member of Provincial Assembly through Assembly Question No.31. The Provincial Assembly declared the same appointments as illegal and irregular and politically motivated which was debated in the house on 19.08.2008 and was referred to Standing Committee No.26 for scrutiny. The Committee finalized its report/recommendations and presented to the Assembly on 12.01.2009, which was adopted on the same day. In order to implement the decision of the Standing Committee, duly adopted by the Provincial Assembly the Elementary and Secondary Education Department constituted the following three Committees to check the appointments record of the period from 01.01.2007 to 30.06.2008 in pursuance of the Minutes of the meeting held on 13.01.2009 of the Standing Committee No. 26 of Provincial Assembly vide Notification No. SO (AB) E&SED/4-4/Enq/DIK/2009 dated 01-01-2009.

Committee No.1 for scrutiny of Illegal/Irregular appointments of KPOs /PSTs /Lab Assistants /Junior Clerks/ Assistant Store Keepers and Class-IV Male and Female.

Committee No.2 for scrutiny of Illegal/Irregular appointments of CT, DM, PET Male and Female.

Committee No.3 for scrutiny of Illegal/Irregular appointments of Arabic Teacher, Theology Teacher and Qari Male and Female.

The enquiry Reports were submitted to the Standing Committee on 08.01.2009. The Standing Committee recommended to the department to terminate the

Attested
 [Signature]

to
 di
 ra
 app
 irreg
 comm
 Khan
 dated
 DI Khan
 ROCE
 In c
 mentary
 judgemet
 ure tran
 ned an
 ents, t
 al hear
 creden
 shrig u
 were co
 s were
 (An
 gory
 ale)

illegal and irregular appointees except Class-IV employees and those who got appointment on Merit.
 Peshawar High Court D.I.Khan Bench disposed off a writ Petition No 252/2009 Hussan Ara and six others versus Government of NWFP (Now Khyber Pakhtunkhwa) on 11.06.2009 with the direction to act upon the enquiry report positively within two months, the inquiry report dated 05.01.2009 in which it was reported that the appointment made from 01.01.2007 to 30.06.2008 are illegal.
 Against the following 1390 sanctioned posts of various categories of Teachers more than two thousand persons were appointed.

27

PST	961
AT	61
TT	59
Qari	50
CT	171
DM	43
PET	45
Total	1390

After segregating 440 PST (309 Male + 131 female) were appointed on Merit while the remaining 1613 male & female appointment of various category were illegal and irregular in term of prescribed method of recruitment under the rules. Recommendations of the Standing Committee was processed and approval of the Chief Minister was obtained for termination of these illegal and irregular appointees. The decision of the Standing Committee was communicated to the DCO D I Khan for compliance, in response to which DCO D I Khan terminated 1613 employees vide his office order No 8021/DCO (Edu) dated 04-09-2009 and was endorsed by the Executive District Officer (E&SE) D I Khan vide his office Endst No 10239 dated 04.09.2009.

PROCEEDINGS

In compliance with above referred Notification from the Secretary Elementary & Secondary Education Department, as per direction contained in the judgement of Khyber-Pakhtunkhwa Services Tribunal dated 27.10.2011 and to ensure transparency and providing fair opportunity of personal hearing to all concerned and further to ensure compliance with the mandatory legal requirements, the Committee started the enquiry proceeding. For the purpose of personal hearing of the applicants, checking of their acadmic & professional certificats ,credentail and service record the following schedule was published in Daily "Mashriq" dated 15-12-2011 and other leading and local newspapers, the appellants were called for hearing in Circuit House D.I.Khan on the following dates, Notices were also pasted on District offices Notice Boards so as to give it wide publicity:- (Annexure-C)

S.No	Category	Date
1.	PST(Male)	19.12.2011

Attested
 Anwar

~~103~~

departmental Selection Committee after the vacancies have been advertised in the newspapers"

- 6. In case of appointment of the applicants the vacancies were not advertised and Departmental Selection Committee has not recommended the applicants for the appointment.
- 7. Appeals being merit less deserve to be dismissed on the analogy of the decision of the Khyber Pakhtunkhwa Services Tribunal decision under Para-9 (i) read with Para-8(b).

RECOMMENDATIONS:

The Committee heard personally and scrutinized the record and appeals of terminated PST (M&F), CT (M&F), DM (M&F), PET (M&F), AT (M&F), TT (M&F), Qari (M&F) teachers/officials lying in the office of the Executive District Officer (E&SE) D. I. Khan on case to case basis in accordance with Khyber Pakhtunkhwa Services Tribunal order dated 27.10.2011, and segregated /check/scrutinize their cases on the basis of different categories of Teachers/officials from 19.12.2011 to 24.12.2011,

All the appointments of the appellants against the posts of PST (M&F), CT (M&F), DM (M&F), PET (M&F), AT (M&F), TT (M&F), Qari (M&F) appended under various categories from S.No 1 to 41 have been made without observing codel formalities/procedure, Government Policy and Merit and in violation of Rule 10(2) of the NWFP (now Khyber Pakhtunkhwa) Civil Servants (Appointment, Promotion and Transfer Rules 1989. The appointments of the appellants are declared illegal and irregular. Cases being merit less deserves to be terminated. The following steps are recommended to be taken.

- a. Executive District Officer Elementary and Secondary Education D I Khan is required to issue proper termination orders of the above appellants and similar cases listed above under various categories PST (M&F), CT (M&F), DM (M&F), PET (M&F), AT (M&F), TT (M&F), Qari (M&F) teachers in the findings from S.No.1-41 excepts those who were working on lower posts and were appointed on higher posts in other categories, they may be reversed to their original posts.
- b. Executive District Officer Elementary and Secondary Education D I Khan is further required to release/activate the pay of those PST Male who were appointed on merit included in the joint appointment order of 309 candidates dated 02.07.2007 and PST Female who were appointed on merit included in the joint appointment order of 131 candidates dated 02.07.2007. (Annexure- E-1),
- c. Executive District Officer Elementary and Secondary Education D I Khan is required to advertise the vacant posts immediately and complete the recruitment process before 15 March , 2012 and the terminated teachers may be provide opportunity to compete if otherwise they have the qualification required for the post and further they may be awarded extra 2 marks per year of span of service rendered if they actually performed duty after appointment.
- d. District Coordination Officer D I Khan is required to recover the claim of appellants who have alleged performance of duty for the considerable

Attested
Shwari

-15-

Executive District Officer
E & S E D I Khan (Member)

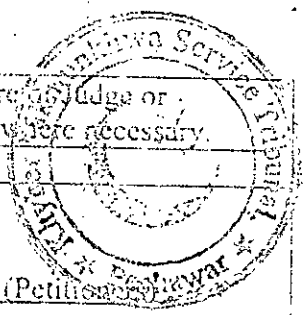
Executive District Officer
E & S E Tank (Member)

3. A - Wali Khan
Dy Director E&SE
Khyber Pakhtunkhwa.
(Member)

4. (Muhammad Rafiq Chhattal)
Director,
Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar.
(Member)

5. Muhammad Mushtaq Jadoon)
Secretary
Elementary and Secondary Education.
Khyber Pakhtunkhwa Peshawar.
(Chairman)

Attested
Shirwaz



S.No.of Order or proceedings	Date of Order or proceeding	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
1	2	3
	14.05.2013	<p style="text-align: center;"><u>Execution Petition No.34/12</u> <u>Munammad Hassan Khan etc..... (Petitioners)</u> <u>Versus</u> <u>Secretary, E&SE Department, KPK, etc. (Respondents).</u></p> <p>Counsel for the petitioners, Mr.Muhammad Rafique-Khattak, Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and Syed Feroz Hussain-Shah, EDO(E&SE) D.I.Khan in person alongwith Mashal Khan, L.O and Muhammad Nawaz, ADO on behalf of the respondents with AAG present. The respondents have already provided implementation report, which has been perused in the light of judgment of the Tribunal. The implementation report would show that after providing opportunity of hearing, to the petitioners and appellants in the connected appeals, and scrutinizing record on case to case basis, the Committee made certain recommendations including issuance of termination/ removal orders of those found illegally appointed and reversion to lower posts of those who were appointed on higher posts by other categories and also releasing/activating pay of those PETs (Male) and (Female) who were found illegally appointed on merit. The Director (E&SE) KPK and EDO (E&SE) D.I.Khan stated at the Bar that they have already implemented recommendations of the Committee and issued the orders/letters accordingly, in accordance with the recommendations and letter and spirit of the judgment of the Tribunal dated 27.10.2011 in Service Appeal No. 1407/2010 titled 'Asad Salam-vs-Province of KPK through Secretary, Elementary & Secondary Education, Peshawar etc.'. Be that as it may, the that remains that in accordance with the afore-</p>

Muhammad Rafique
Muhammad Nawaz

ATTESTED
Khyber Pakhtunkhwa Service Tribunal, Peshawar

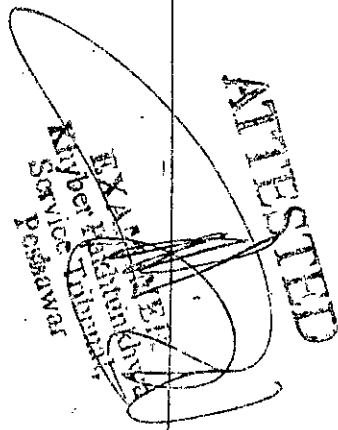
mentioned judgment of the Tribunal, the respondent-department not only widely publicized hearing of cases of the petitioners and other appellants through publication in the newspapers but have also prepared list of those who appeared before the Committee in response to the publication and obtained their signatures on the list. The learned counsel for the petitioners also confirmed holding of meeting by the Committee at D.I.Khan and participation of the petitioners and other connected persons in the proceedings of the Committee. The implementation report also shows that each and every case has been examined by the Committee after providing opportunity of hearing to the petitioners/appellants, and in pursuance of such proceedings, recommendations have been made by the Committee which are being implemented by the respondent-department. In short, in accordance with the judgment dated 27.10.2011 of the Tribunal, the Secretary, E&SE, KPK, Peshawar (Respondent No.1) constituted a Committee, headed by him, and comprising five other officers of the Education Department including Director, E&SE, KPK, Peshawar and EDO(E&SE) D.I.Khan, conducted proceedings at D.I.Khan after widely publicizing the same through newspapers and thereby ensuring participation of the petitioners and other appellants and providing opportunity of hearing to them and also scrutinizing cases of the petitioners and other appellants on case to case basis and thereafter making certain recommendations which are being implemented through issuance of appropriate orders. As such, the judgment of the Tribunal stands implemented in its letter and spirit.

The learned counsel for the petitioners, however, raised

*Attested
Anwar*



EXAMINATION
TULI
PESHAWAR
ATTESTED



objections regarding the proceedings conducted by the Committee; but he was unable to augment his contentions in this regard with support of law; as fresh orders in pursuance of the proceedings and recommendations of the Committee would accrue a fresh cause of action for appeal or any other remedy prescribed by the law, which is, certainly, beyond the scope of the implementation/execution proceedings. The misgivings, probably, emanate from lack of knowledge about proceedings of the Committee, which have been provided to the Tribunal in the shape of a book, but not available either with the counsel for the petitioners or petitioners and other appellants. Therefore, the respondents are directed to place the report on the website of the department so that the petitioners, appellants and all concerned should get knowledge of the proceedings and recommendations and chalk out future course of action in accordance with law. The respondents are further directed to ensure compliance with the recommendations of the Committee forthwith, without further wastage of time, so that the aggrieved persons can seek remedy available to them under the law.

In view of the above, the implementation/execution petition is disposed of as having served the purpose. File be cor signed to the record.

ANNOUNCED
14.03.2012

MEMBER

CHAIRMAN

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

*Attested
Amman*

Date of Presentation of Application 15-3-2012
 Number of Words 1200
 Copying Fee 8-
 Urgent 8-
 Total 8-

Name of Copyist 2
 Date of Completion of Copy 16-3-2012
 Date of Delivery of Copy 16-3-2012

بخدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر (میل) صاحب ضلع
ڈیرہ اسماعیل خان

جناب عالی!

یہ کہ موڈ بانہ گزارش ہے کہ من سائل مورخہ 30-11-2007 محکمہ ایجوکیشن میں بطور PST بھرتی ہوا تھا جس سے پہلے من سائل سینئر سول جج کے ماتحت چار سال سے پیادہ کی ڈیوٹی سرانجام دے رہا تھا۔ میں نے باقاعدہ طور پر جوڈیشلی سے NOC لے کر جناب والا کا ملازم بطور PST تعینات ہوا لیکن بعدہ کچھ غلط بھرتیوں کی وجہ سے من سائل کو بھی برخاست کر دیا گیا جس پر من سائل نے سروس ٹریول میں اپیل کی جو کہ منظور ہوئی اور کمیٹی بننے کا حکم ہوا۔ کمیٹی نے میری مذکورہ مضروعات پر کوئی توجہ نہیں دی اور میری تعیناتی کو غلط قرار دیا لیکن مجھے کوئی بھی برخاستگی آڈر آج تک موصول نہیں ہوا اور نہ ہی مجھے محکمہ میں کام کرنے کی اجازت دے رہا ہے۔

گزارش یہ کہ من سائل جوڈیشلی محکمہ سے چار سال کی سروس کر کے محکمہ تعلیم میں باقاعدہ بھرتی ہوا ہے۔ میرا معاملہ دیگر غلط بھرتیوں سے مختلف ہے اور جناب والا کی توجہ کا طلب ہے اور اگر معاملہ جناب والا کے اختیارات سے باہر ہے مجھے حکم برخاستگی دیا جائے اور یا مجھے اصل محکمہ جوڈیشلی میں واپس بھیجا جائے۔

آپ کی عین نوازش ہوگی

مورخہ: 16-06-2014

(Pst)
16/06/14

Affected
Shamir

عرفان علی عباس ولد غضنفر علی
16-6-14
گلی کپاس والی ضلع ڈیرہ اسماعیل خان (سائل)

VAKALATNAMA

- 20 -

IN THE COURT OF KPK Service Tribunal Camp D.I.KHAN

Irfaan Ali

VERSUS

KPK

SUIT/OFFICE..... Appeal

I/WE..... Appellant

The above named..... Irfaan Alihereby appoint

MUHAMMAD ANWAR AWAN ADVOCATE, HIGH COURT D.I.Khan, in the above mentioned case to all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this court/tribunal in which the same may be tried or heard or any other proceedings out of our connected therewith.
2. To sign and verify and file or withdraw all proceedings, petitions, appeals, affidavits, and applications for compromise or withdrawal, or for the submission to arbitration of the said case or any other documents, may be deemed necessary or advisable by them by the conduct, prosecution or defense of the said case at all its stages.
3. To receive payments of and issue receipts for all moneys that may be or become due and payable to us during the course on conclusion of the proceedings.
To do all other acts and things, which may deemed necessary or advisable during the court of Proceedings.

AND hereby agree:

- a) To ratify whatever advocates may do the proceedings.
- b) Not to hold the advocates responsible if the said case be proceed ex-parte or dismissed in default in consequence of their absence form the court when it is called for hearing.
- c) That the advocates shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remain UN-paid.
- d) That advocates may be permitted to argue any other point at the time of arguments.

In witness whereof I/we have signed this vakalatnama here under the contents of which have been read / explained to me/us fully understood by me/us this.

Date 12/9/14

Muhammad Anwar
Adv

Signature of executant (s)

Accepted by:
MUHAMMAD ANWAR AWAN
ADVOCATE
HIGH COURT
Distt: Courts, D.I.Khan.
Ph.# (off) 0966-730828

M. Shakeel Saffder
Adv

M. Shakeel Saffder
Advocate

Robman
Muhammad Anwar

BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

Jr. Irfan Ali
Nisar Ahmad

Service Appeal No. ^{1224/14} ~~1154/2013~~

VS

Government of KPK

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Preliminary Objections

1. That the Service Appeal is not maintainable and incompetent in the eyes of law in its present form.
2. That the appellant is estopped by his own unwholesome conduct as Public Servant to file this appeal.
3. That the appellant has got no cause of action or locus standi to file the instant appeal, when there is provision for Review under Rule 3 of Appeal Rules, 1986.
4. That the appellant has not come to this Honourable Court with clean hands and has suppressed all relevant facts.
5. That the appellant has concealed the material facts and ground realities from this Honourable Tribunal.
6. That the appeal is bad due to mis-joinder / non-joinder of necessary parties.
7. That the appellant has not come to Honourable Court with clean hands.
8. That the KPK Service Tribunal has no jurisdiction to entertain the instant petition in its present form.
9. That the appeal has been mis-oriented, mis-constructed and mistakenly drawn and is incompetent in its present frame and context, and is liable for Rejection.
10. That the appeal is weak having no force, fabricated, fictitious, based on ill will, malafide motives and having no legal footings in the eyes of law.
11. That the present service appeal is not maintainable in its present form and jurisdiction of this **Honourable Service Tribunal** is barred by the **Section 23 of Khyber Pakhtunkhwa Rules 1974** "According to which no Tribunal shall entertain any appeal in which the matter directly or substantially has already been finally decided by a Court / Tribunal of competent jurisdiction".
12. That the recommendations of the Committee constituted in light of direction of this Honourable Tribunal were implemented and terminated all the illegal teachers and provided them termination orders. Hence the appeal is badly time barred as well as barred by leeches.
13. That the proceeding with the instant appeal would be a futile exercise and just wastage of the precious time of this honourable Tribunal.
14. That as stated in the objections supra, the appeal is bereft of cause of action and is liable for dismissal.

Objection on Facts

1. Para pertains to the address of parties hence need no comments.
2. Incorrect / not admitted. Vehemently denied. The EDO (S&L) advertised vacant post of PST, CT and other cadres on **07.04.2007**. After completion of codal formalities 309 male PSTs was appointed on merit under joint appointment order No. 12655-973 dated 02.07.2007. The name of appellant does not reflect in the said appointment order.
 - i. The appellant is one of the 1613 illegal terminated teachers. His services along with **1613 teachers were terminated by the then DCO DIKhan** vide order dated 04.09.2009. (annexure A).
 - ii. Termination orders dated 04.09.2009 were challenged before the **Honourable Peshawar High Court DIKhan Bench** and Honourable High Court suspended

- 0
- the operation of termination orders dated 04.09.2009 till the decision of writ petitions (**annexure B**).
- iii. On 29.04.2010 writ petitions were returned to the petitioners and termination orders dated 04.09.2009 was implemented with effect from 01.05.2010 (**annexure C**).
 - iv. That the appellant and others preferred service appeal for reinstatement of their services.
 - v. The **Honourable Service Tribunal vide judgment dated 27.10.2011 in Service Appeal No. 1407/2010** instead of outright reinstatement of appellant and others remanded / sent back case of the appellant and similar placed persons to the Secretary E&SE KPK Peshawar for reconsideration (**annexure D**).
 - vi. The High Level inquiry committee headed by the Secretary E&SE KPK Peshawar examined and considered the case of the appellant and others. The committee dismissed the appeals of all the appellants being devoid of merits as well as legal footings and submitted inquiry report to this Honourable Tribunal. The name of the appellant reflects in the findings of inquiry committee.
 - vii. In compliance with the recommendations of the inquiry committee, the then EDO DI Khan issued **termination order on 08.02.2012**. The name of appellant is present in the termination order list.
 - viii. After submission of inquiry report and termination orders some of the aggrieved affectees filed Execution Petitions for the implementation of the order dated 27.10.2011 of the Honourable Tribunal. The Honourable Tribunal disposed of Execution Petition on 14.03.2012. Subsequently order dated 14.03.2012 of the Honourable Tribunal was challenged in CPLA before Supreme Court of Pakistan. But the apex court declined leave to appeal and dismissed the petitions. Thus termination of the service of the appellant and others attained finality. (**annexure E, F**)
3. Incorrect / not admitted. This para pertains to the record.
 4. Incorrect/not admitted, strongly denied. The appellant was appointed as school teacher **without observing all the codal formalities**. The appointment of the appellant was illegal, out of turn without performing all the pre-requisites which are necessary and compulsory for the appointment of the school teacher as per existing rules. The act of the respondents is quite legal, justified, bonafide, based on real legal facts and in the interest of government and the public at large.
 5. Incorrect/not admitted, intensely denied. In year 2008 Mr. **Israr Ullah Khan Gandapur (Late) Ex MPA has raised a question in provincial assembly regarding the illegal appointments and recruitments in the education department DI Khan**. Hence the provincial Assembly constituted a committee No. 26 for Elementary and Secondary Education Department dated 20.08.2008. The standing committee No. 26 scrutinized all the appointments record of the year 2007-08 and concluded that all the illegal appointed teachers were terminated from service during the period of 01.01.2007 to 30.06.2008. (**Annexure G**) Therefore the appellant **has been terminated from service along with all the illegally appointed teachers in the year 2007 & 2008** on the direction of Provincial Government dated 04.09.2009. Then appellant and other terminated teachers approached the **Honourable High Court and Supreme Court of Pakistan, both the courts has dismissed the appeals of appellant**. Then appellant and others approach the Honourable

Service Tribunal and Service Tribunal remanded all the appeals to the Secretary E&SE KPK Peshawar vide judgment dated 27.10.2011 in Service Appeal No. 1407/2010. Therefore, the stance of the appellant is having no truth and is totally false and fictitious.

6. Incorrect / not admitted, vigorously denied. The Secretary Education has constituted a committee to probe the matter. **The committee concluded that the appointment of the appellant and other were illegal and irregular under Rule 10(2) of the Khyber Pakhtunkhwa Civil Servant Appointment Promotion and Transfer Rules 1989** which reproduce as, "initial recruitment to the posts which do not fall within the purview of the commission shall be made on the recommendations of the Departmental Selection Committee after the vacancies have been advertised in the News Papers". The termination order of the appellant has been made in good faith, bonafide and in the best interest of public at-large.
7. Incorrect / not admitted, fervently denied. The recommendations of the enquiry committee were implemented with letter and spirit. In the **Execution Petition No. 34/2012 the Director E&SE KPK Peshawar and EDO DIKhan stated at the bar** dated 14.03.2012 before the Service Tribunal that they have already implemented the recommendations of the committee and issued the termination orders / letter accordingly. Further appellants filed **writ petition No 481/2014** and the same was disposed of on 03.02.2015. This act of the respondents cannot be declared against the law on any ground whatsoever but the straight away rejection of appeal. **(Annexure H)**
8. Incorrect / not admitted. The appeal of appellant is badly time barred. According to Section 23 of Khyber Pakhtunkhwa Rules 1974 "No Tribunal shall entertain any appeal in which the matter directly or substantially has already been finally decided by a Court / Tribunal of competent jurisdiction".
9. Incorrect / not admitted. The Honourable Court has no jurisdiction to interfere in the administrative action of the authority in instant Service Appeal.

Objections on Ground

1. Incorrect/ not admitted, strongly denied. After fulfilling all the codal and legal formalities, besides the act of respondents was according to the law with legal justification and in the light of **Judgment on Service Tribunal in service appeal No. 1407/2010 decided on 27.10.2011**. There is no prepense malice in fact and malice in law against the appellant.
2. Incorrect / not admitted, vehemently refuted. The report of committee was comprehensive in all respect as per the direction of Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar.
3. Incorrect / not admitted, forcefully denied. The committee was constituted on the direction of the Honourable Service Tribunal. After personal hearing of appellants

committee comes to the conclusion that the **appointments of the appellants were illegal and irregular in the light of Rule 10(2) of APT 1989 (annexure I).**

4. Incorrect / not admitted, hotly denied. The appellants were treated according to law and provided an **opportunity of hearing and defense** but the appellants failed to defend their illegal appointment orders. The termination orders were issued in the public interest by the Competent Authority after fulfilling all legal and codal formalities, therefore, the petitioner has got no cause of action or locus standi to file the writ petition for his grievances
5. Incorrect / not admitted heatedly denied. It is clear crystal from the **judgment dated 14.03.2012 in EP No. 34/2012 the termination orders were produced before the Honourable Service Tribunal and the same termination order were also presented before the Honourable High Court dated 03.02.2015.** The photocopy of the same was provided to the appellants. Hence the appeal of the appellant is badly time barred and in fruituous.

The respondents also seek leave of the Honourable Court to advance and urge additional as well as further grounds during the course of arguments.

PRAYER:

It is, therefore, most humbly prayed that on acceptance of these para-wise comments, the instant Service Appeal being devoid of legal footings and merits, may graciously be dismissed with cost.



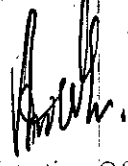
Secretary

Elementary & Secondary Education Department
Khyber Pakhtunkhwa Peshawar



Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Elementary & Secondary Education Department
Khyber Pakhtunkhwa Peshawar



District Education Officer ()
Dera Ismail Khan

BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

1224 / 2014
Service Appeal No. 030/2014

7
Jofan Ali

~~Director~~ VS

Government of KPK

Affidavit

I Mr. kamran Khan legal representative of District Education Officer (M) DIKhan do hereby solemnly affirm and declared on oath that content of the above mentioned service appeal are correct to the best of my knowledge and nothing has been concealed from this Honorable Service Tribunal.

M. Kamran
Deponent

BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

1224/2018

Service Appeal No. 1224/2018

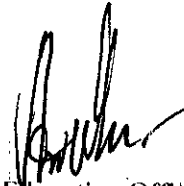
Dr. Faran Ali

vs

Government of KPK

Authority

I District Education Officer (M/F) DIKhan do hereby authorized Mr. Kamran Khan Legal representative of DEO (M) DIKhan to attend this Honourable Service Tribunal KPK Peshawar DIKhan Bench on my behalf in connection with submission of para wise comments and till the decision of the service appeal.


District Education Officer (M/F)
Dera Ismail Khan

BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

Drfan Ali

Service Appeal No. *1224/14*

VS

Government of KPK

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Preliminary Objections

1. That the Service Appeal is not maintainable and incompetent in the eyes of law in its present form.
2. That the appellant is estopped by his own unwholesome conduct as Public Servant to file this appeal.
3. That the appellant has got no cause of action or locus standi to file the instant appeal, when there is provision for Review under Rule 3 of Appeal Rules, 1986.
4. That the appellant has not come to this Honourable Court with clean hands and has suppressed all relevant facts.
5. That the appellant has concealed the material facts and ground realities from this Honourable Tribunal.
6. That the appeal is bad due to mis-joinder / non-joinder of necessary parties.
7. That the appellant has not come to Honourable Court with clean hands.
8. That the KPK Service Tribunal has no jurisdiction to entertain the instant petition in its present form.
9. That the appeal has been mis-oriented, mis-constructed and mistakenly drawn and is incompetent in its present frame and context, and is liable for Rejection.
10. That the appeal is weak having no force, fabricated, fictitious, based on ill will, malafide motives and having no legal footings in the eyes of law.
11. That the present service appeal is not maintainable in its present form and jurisdiction of this **Honourable Service Tribunal** is barred by the **Section 23 of Khyber Pakhtunkhwa Rules 1974** "According to which no Tribunal shall entertain any appeal in which the matter directly or substantially has already been finally decided by a Court / Tribunal of competent jurisdiction".
12. That the recommendations of the Committee constituted in light of direction of this Honourable Tribunal were implemented and terminated all the illegal teachers and provided them termination orders. Hence the appeal is badly time barred as well as barred by leeches.
13. That the proceeding with the instant appeal would be a futile exercise and just wastage of the precious time of this honourable Tribunal.
14. That as stated in the objections supra, the appeal is bereft of cause of action and is liable for dismissal.

Objection on Facts

1. Para pertains to the address of parties hence need no comments.
2. Incorrect / not admitted. Vehemently denied. The EDO (S&L) advertised vacant post of PST, CT and other cadres on **07.04.2007**. After completion of codal formalities 309 male PSTs was appointed on merit under joint appointment order No. 12655-973 dated **02.07.2007**. The name of appellant does not reflect in the said appointment order.
 - i. The appellant is one of the 1613 illegal terminated teachers. His services along with **1613 teachers were terminated by the then DCO DIKhan** vide order dated **04.09.2009**. (annexure A).
 - ii. Termination orders dated **04.09.2009** were challenged before the **Honourable Peshawar High Court DIKhan Bench** and Honourable High Court suspended

- the operation of termination orders dated 04.09.2009 till the decision of writ petitions (**annexure B**).
- iii. On 29.04.2010 writ petitions were returned to the petitioners and termination orders dated 04.09.2009 was implemented with effect from 01.05.2010 (**annexure C**).
 - iv. That the appellant and others preferred service appeal for reinstatement of their services.
 - v. The Honourable Service Tribunal vide judgment dated 27.10.2011 in Service Appeal No. 1407/2010 instead of outright reinstatement of appellant and others remanded / sent back case of the appellant and similar placed persons to the Secretary E&SE KPK Peshawar for reconsideration (**annexure D**).
 - vi. The High Level inquiry committee headed by the Secretary E&SE KPK Peshawar examined and considered the case of the appellant and others. The committee dismissed the appeals of all the appellants being devoid of merits as well as legal footings and submitted inquiry report to this Honourable Tribunal. The name of the appellant reflects in the findings of inquiry committee.
 - vii. Incompliance with the recommendations of the inquiry committee, the then EDO DIKhan issued **termination order on 08.02.2012**. The name of appellant is present in the termination order list.
 - viii. After submission of inquiry report and termination orders some of the aggrieved affectees filed Execution Petitions for the implementation of the order dated 27.10.2011 of the Honourable Tribunal. The Honourable Tribunal disposed of Execution Petition on 14.03.2012. Subsequently order dated 14.03.2012 of the Honourable Tribunal was challenged in CPLA before Supreme Court of Pakistan. But the apex court declined leave to appeal and dismissed the petitions. Thus termination of the service of the appellant and others attained finality. (**annexure E, F**)
3. Incorrect / not admitted. This para pertains to the record.
 4. Incorrect/not admitted, strongly denied. The appellant was appointed as school teacher **without observing all the codal formalities**. The appointment of the appellant was illegal, out of turn without performing all the pre-requisites which are necessary and compulsory for the appointment of the school teacher as per existing rules. The act of the respondents is quite legal, justified, bonafide, based on real legal facts and in the interest of government and the public at large.
 5. Incorrect/not admitted, intensely denied. In year 2008 Mr. **IsrarUllah Khan Gandapur (Late) Ex MPA** has raised a question in provincial assembly regarding the illegal appointments and recruitments in the education department DIKhan. Hence the provincial Assembly constituted a committee No. 26 for Elementary and Secondary Education Department dated 20.08.2008. The standing committee No. 26 scrutinized all the appointments record of the year 2007-08 and concluded that all the illegal appointed teachers were terminated from service during the period of 01.01.2007 to 30.06.2008. (**Annexure G**) Therefore the appellant has been terminated from service along with all the illegally appointed teachers in the year 2007 & 2008 on the direction of Provincial Government dated 04.09.2009. Then appellant and other terminated teachers approached the Honourable High Court and Supreme Court of Pakistan, both the courts has dismissed the appeals of appellant. Then appellant and others approach the Honourable

Service Tribunal and Service Tribunal remanded all the appeals to the Secretary E&SE KPK Peshawar vide judgment dated 27.10.2011 in Service Appeal No. 1407/2010. Therefore, the stance of the appellant is having no truth and is totally false and fictitious.

6. Incorrect / not admitted, vigorously denied. The Secretary Education has constituted a committee to probe the matter. **The committee concluded that the appointment of the appellant and other were illegal and irregular under Rule 10(2) of the Khyber Pakhtunkhwa Civil Servant Appointment Promotion and Transfer Rules 1989** which reproduce as, "initial recruitment to the posts which do not fall within the purview of the commission shall be made on the recommendations of the **Departmental Selection Committee after the vacancies have been advertised in the News Papers**". The termination order of the appellant has been made in good faith, bonafide and in the best interest of public at-large.
7. Incorrect / not admitted, fervently denied. The recommendations of the enquiry committee were implemented with letter and spirit. In the **Execution Petition No. 34/2012 the Director E&SE KPK Peshawar and EDO DIKhan stated at the bar** dated 14.03.2012 before the Service Tribunal that they have already implemented the recommendations of the committee and issued the termination orders / letter accordingly. Further appellants filed **writ petition No 481/2014** and the same was disposed of on 03.02.2015. This act of the respondents cannot be declared against the law on any ground whatsoever but the straight away rejection of appeal. (**Annexure H**)
8. Incorrect / not admitted. The appeal of appellant is badly time barred. According to Section 23 of Khyber Pakhtunkhwa Rules 1974 "No Tribunal shall entertain any appeal in which the matter directly or substantially has already been finally decided by a Court / Tribunal of competent jurisdiction".
9. Incorrect / not admitted. The Honourable Court has no jurisdiction to interfere in the administrative action of the authority in instant Service Appeal.

Objections on Ground

1. Incorrect/ not admitted, strongly denied. After fulfilling all the codal and legal formalities, besides the act of respondents was according to the law with legal justification and in the light of **Judgment on Service Tribunal in service appeal No. 1407/2010 decided on 27.10.2011**. There is no prepense malic in fact and malice in law against the appellant.
2. Incorrect / not admitted, vehemently refuted. The report of committee was comprehensive in all respect as per the direction of Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar.
3. Incorrect / not admitted, forcefully denied. The committee was constituted on the direction of the Honourable Service Tribunal. After personal hearing of appellants

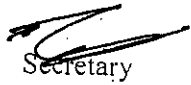
committee comes to the conclusion that the **appointments of the appellants were illegal and irregular in the light of Rule 10(2) of APT 1989 (annexure I).**

4. Incorrect / not admitted, hotly denied. The appellants were treated according to law and provided an **opportunity of hearing and defense** but the appellants failed to defend their illegal appointment orders. The termination orders were issued in the public interest by the Competent Authority after fulfilling all legal and codal formalities, therefore, the petitioner has got no cause of action or locus standi to file the writ petition for his grievances
5. Incorrect / not admitted heatedly denied. It is clear crystal from the **judgment dated 14.03.2012 in EP No. 34/2012 the termination orders were produced before the Honourable Service Tribunal and the same termination order were also presented before the Honourable High Court dated 03.02.2015.** The photocopy of the same was provided to the appellants. Hence the appeal of the appellant is badly time barred and in fructuous.

The respondents also seek leave of the Honourable Court to advance and urge additional as well as further grounds during the course of arguments.

PRAYER:

It is, therefore, most humbly prayed that on acceptance of these para-wise comments, the instant Service Appeal being devoid of legal footings and merits, may graciously be dismissed with cost.



Secretary
Elementary & Secondary Education Department
Khyber Pakhtunkhwa Peshawar

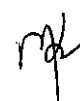


Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Director
Elementary & Secondary Education Department
Khyber Pakhtunkhwa Peshawar



District Education Officer ()
Dera Ismail Khan



BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 1224/2014

Jofan Ali

VS

Government of KPK

Affidavit

I Mr. kamran Khan legal representative of District Education Officer (M) DIKhan do hereby solemnly affirm and declared on oath that content of the above mentioned service appeal are correct to the best of my knowledge and nothing has been concealed from this Honorable Service Tribunal.

M. Khan
Kamran
Deponent

BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

1224/2015
Service Appeal No. 1111/2015


17
Jofan Ali

VS

Government of KPK

Authority

I District Education Officer (M/F) DIKhan do hereby authorized Mr. Kamran Khan Legal representative of DEO (M) DIKhan to attend this Honourable Service Tribunal KPK Peshawar DIKhan Bench on my behalf in connection with submission of para wise comments and till the decision of the service appeal.


District Education Officer (M/F)
Dera Ismail Khan